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August 21, 2002

Ms. Carole J. Washburn, Secretary
Washington Utilities and
Transportation Commission
1300 S. Evergreen Park Dr. S.W.
P.O. Box 47250
Olympia, WA 98504-7254

Re: Docket No.
Request for approval of negotiated agreement between
Qwest Corporation and Covad

Dear Ms. Washburn:

In accordance with the Interpretive and Policy Statement issued on June 28, 1996 in Docket No. UT-960269, please find enclosed three (3) copies of the negotiated (1) U S WEST Service Level Agreement with Covad Communications Company – Unbundled loop Services, and (2) Facility Decommissioning Agreement between Qwest and Covad for filing with the Commission. Qwest seeks approval of the bracketed language in the enclosed agreement.

Qwest has previously submitted hundreds of agreements with CLECs in Washington for approval by the Commission under Section 252(e)(1). In addition to the filed agreements, Qwest also has implemented other contractual arrangements with CLECs that it does not believe fall within the filing requirements of Section 252 of the Telecommunications Act of 1996.

As the Commission is aware, earlier this year questions were raised regarding Qwest's decisions about these other, unfiled agreements. Notably, a complaint was filed by the Minnesota Department of Commerce alleging, after a review of dozens of Qwest-CLEC contracts, that eleven should have been filed with the Minnesota PUC. The Commission addressed this issue in the 39th Supplemental Order in Docket Nos. UT-003022/003040, paragraphs 289-95. Qwest also filed a petition with the FCC requesting a declaratory ruling as to the scope of the Section 252(a) filing requirement in this area.

Qwest has at all times operated in good faith in filing with the Commission interconnection agreements and amendments, and is committed to full compliance with the Act. After this issue arose Qwest modified its processes and standards for all new agreements with CLECs. Qwest advised the Commission of this policy by letter on May 9, 2002. Under this policy Qwest is

filing all new contracts, agreements or letters of understanding between Qwest Corporation and CLECs that create obligations to meet the requirements of Section 251(b) or (c) on a going forward basis. Qwest believes that this commitment goes well beyond the requirements of Section 252(a). For example, this policy reaches details of business-to-business carrier relations that Qwest does not think the Act requires to be filed with state commissions for approval. However, Qwest is committed to follow this standard until the FCC issues a decision on the appropriate standard in this area. (Unless requested by the Commission, Qwest has not been filing routine day-to-day paperwork, orders for specific services, or settlements of past disputes that do not otherwise meet the above definition.)

Older agreements provide a more complicated case. Qwest naturally has been concerned about any potential penalty liability with regard to "second-guessing" of its past filing decisions, especially in an area where the standards have not been clearly defined. Nevertheless, Qwest is now taking a further step as a sign of good faith. Specifically, Qwest has reviewed its currently effective agreements with CLECs in Washington that were entered into prior to adoption of the new policy. This group includes those agreements that relate to Section 251(b) or (c) services on an on-going basis which have not been terminated or superseded by agreement, commission order, or otherwise. These agreements have previously been provided in response to the Commission Bench Request in Docket Nos. UT-003022/003040. Qwest has applied its broad new review standard to all such agreements and as a result is now filing those agreements for approval under Section 252 of the Act. The agreements attached to this letter for filing are two of those agreements.

Qwest asks the Commission to approve the attached agreements such that, to the extent any active provisions of such agreements relate to Section 251(b) or (c), they are formally available to other CLECs under Section 252(i). For ease of review, Qwest has bracketed those terms and provisions in the agreements which arguably relate to Section 251(b) or (c) services, and which have not otherwise been terminated or superseded by agreement or Commission order. Qwest will make the bracketed provisions available under Section 251(i).

As noted above, Qwest has not been and is not filing routine day-to-day paperwork, settlements of past disputes, stipulations or agreements executed in connection with federal bankruptcy proceedings, or orders for specific services. Included in this last category are contract forms for services provided in approved interconnection agreements, such as signaling and call-related databases. The parties may execute a form contract memorializing the provision of such services offered and described in the interconnection agreement. Upon the Commission's request, Qwest can provide examples of routine paperwork, order documents, or form contracts for its review.

Qwest realizes that its voluntary decision to submit the attached agreements does not bind the Commission with respect to the question of Qwest's past compliance. However, Qwest submits that it has acted in good faith. In any event, Qwest's actions here should remove any argument with respect to Qwest's compliance with Section 252 now and going forward.

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Qwest requests that the Commission approve the bracketed portion of these agreements as soon as reasonably practicable. Qwest reserves its rights to demonstrate that the agreements need not have been filed in the event of an enforcement action in this area. Meanwhile, however, Qwest will offer other CLECs any bracketed terms in effect for the benefit of the contracting CLEC pursuant to the polices and rules related to Section 251(i).

Qwest will also be posting the agreements on the website it uses to provide notice to CLECs and announcing the immediate availability to other CLECs in Washington of the bracketed terms and conditions. This will facilitate the ability of CLECs to request terms and conditions, subject to the Commission's decision approving the bracketed provisions of the agreements filed here.

Given the confidentiality provisions contained in some of these agreements and the fact that the CLECs involved may deem the information contained therein confidential, Qwest has redacted those terms, such as confidential settlement amounts relating to settlement of historical disputes between Qwest and the particular CLEC, confidential billing and bank account numbers and facility locations, which relate solely to the specific CLEC and do not relate to Section 251(b) or (c) services.

The enclosed agreements do not discriminate against non-party carriers. It is consistent with the public interest, convenience, and necessity. It is also consistent with applicable state law requirements, including Commission orders regarding interconnection issues.

The Order on Arbitration Procedure also requests that a proposed order accompany the filing. Qwest requests a waiver of that requirement, and is not providing one with this filing, as the Commission has, in the past, used its own format for Orders. If this is not satisfactory to the Commission, please contact me and I will forward a proposed order immediately.

Sincerely,

Adam L. Sherr

ALS/llw
Enclosures

cc: Megan Doberneck, Covad Communications
Dhruv Khanna, Covad Communications

FACILITY DECOMMISSIONING AGREEMENT

THIS FACILITY DECOMMISSIONING AGREEMENT ("Agreement"), is made and entered into as of this 3rd day of January, 2002 (the "Effective Date"), between Qwest Corporation ("Qwest") and Covad Communications Company ("Covad") (Qwest and Covad being sometimes hereinafter referred to collectively as the "Parties" and individually as a "Party").

RECITALS

WHEREAS, Qwest, a local incumbent exchange provider, and Covad, a competitive local exchange provider, are parties to a certain interconnection agreement (the "Interconnection Agreement"), executed pursuant to sections 251 and 252 of the Federal Telecommunications Act of 1996 (the "Act"); and

WHEREAS, pursuant to the Interconnection Agreement, Covad has purchased physical and/or virtual collocation and ancillary services from Qwest. Covad now desires to return to Qwest the collocation sites identified in Exhibit A (the "Facilities") attached hereto and incorporated by reference; and

WHEREAS, the Parties voluntarily enter into this Agreement as a final resolution of disputes arising between the Parties regarding the terms and conditions of Covad's return of the Facilities and the financial obligations of each Party with respect to each of the returned Facilities under the Interconnection Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Facility Decommissioning. In consideration for the Release and Waiver set forth below, Qwest hereby agrees to decommission the Facilities and to waive all fees and charges associated therewith.
2. Credit/Reimbursement. In the event that Covad was previously invoiced and paid Qwest for the decommissioning quotes and the monthly recurring charges past the date of acceptance of the valid decommissioning application, Qwest shall make a one-time credit to Covad for the sum of any non-recurring charges paid for the decommissioning and any monthly recurring charges paid by Covad for the returned Facilities (1) between the payment date of the decommissioning quote non-recurring charge and the date the service order was written to discontinue monthly recurring billing for each of the returned Facilities; and (2) between the date Qwest accepted and validated the decommissioning request and the payment date of the decommissioning quote non-recurring charge. This credit amount will be applied, first, to satisfy any outstanding balances owed by Covad to Qwest, if any. If a credit balance remains, Qwest shall provide a one-time credit to Covad to be used to offset future amounts payable to Qwest pursuant to other agreements between the Parties.
3. Release and Waiver.

(a) For valuable consideration as identified in Sections 1 and 2 above, the Parties hereby release and forever discharge the other and their respective associates, owners, stockholders, predecessors, successors, agents, directors, officers, partners, employees, representatives, employees of affiliates, employees of parents, employees of subsidiaries, affiliates, parents, subsidiaries, insurance carriers, bonding companies and attorneys, from any and all manner of action or actions, causes or causes of action, in law, under statute, or in equity, suits, appeals, petitions, debts, liens, contracts, agreements, promises, liability, claims, affirmative defenses, offsets, demands, damages, losses, costs, claims for restitution, and expenses, of any nature whatsoever, fixed or contingent, known or unknown, past and present asserted or that could have been asserted or could be asserted in any way relating to or arising out of the decommissioning of the returned Facilities or this Agreement (the "Release and Waiver"). The

Parties hereby covenant and warrant that they have not assigned or transferred to any person any claim, or portion of any claim which is released or discharged by this Agreement.

(b) As part of the Release and Waiver described in the previous paragraph, Covad expressly agrees to relinquish forever all rights and interest whatsoever in the returned Facilities and to remove all property it owns from the Facilities within thirty (30) days of the Effective Date of this Agreement at Covad's own expense. Notwithstanding the above, Covad may at any time submit an application for collocation through Qwest's standard ordering process in any of the central offices in which the returned Facilities are located.

(c) In the event Covad fails to remove its equipment from the Facilities as provided above, Qwest may, without notice or demand and in addition to any other right or remedy available at law or equity, remove all of Covad's equipment from the Facility and store the same at Covad's expense. Covad expressly waives any damages occasioned by such removal. Any equipment so removed will be returned to Covad upon payment in full of all storage costs within forty-five (45) days of the removal of the equipment. If within forty-five (45) days following such equipment removal, Covad has not requested the return of its equipment and paid any sums owed, then Qwest may exercise all rights of ownership over such equipment including the right to sell same and retain possession of any sale proceeds. Qwest's exercise of any remedies provided for in this Section 3 shall be without prejudice to any other remedies Qwest may have provided for herein or by law.

4. Confidentiality.

(a) The Parties expressly agree that they will keep the substance of the negotiations and or conditions of the settlement and the terms or substance of this Agreement strictly confidential. The Parties further agree that they will not communicate (orally or in writing) or in any way disclose the substance of negotiations and/or conditions of the settlement and the terms or substance of this Agreement to any person, judicial or administrative agency or body, business, entity or association or anyone else for any reason whatsoever, without the prior express written consent of the other Party unless compelled to do so by law. It is expressly agreed that this confidentiality provision is an essential element of this Agreement. The Parties agree that this Agreement, and the negotiations and all matters related to the Agreement shall be subject to the Rule 408 of the Rules of Evidence, at the federal and state level. The Parties further agree that in the event of a breach of the confidentiality provisions of this Agreement, the harm suffered by the injured Party would not be compensable by monetary damages alone and, accordingly, that the injured Party shall, in addition to other available legal or equitable remedies, be entitled to seek an injunction against such breach.

(b) In the event either Party has a legal obligation which requires disclosure of the terms and conditions of this Agreement, the Party having the obligation shall immediately notify the other Party in writing of the nature, scope and source of such obligation so as to enable the other Party, at its option, to take such action as may be legally permissible so as to protect the confidentiality provided for in this Agreement. The party from whom disclosure is required shall provide as much advance notice to the other Party as is reasonably possible.

5. Binding Arbitration. Any claim, controversy or dispute between the Parties arising out of this Agreement, shall be resolved by private and confidential arbitration conducted by a single arbitrator engaged in the practice of law, under the then current rules of the American Arbitration Association. The Federal Arbitration Act, 9 U.S.C. §§ 1-16, not state law, shall govern the arbitrability of all disputes. The arbitrator shall only have the authority to determine breach of this Agreement, but shall not have the authority to award punitive damages. The arbitrator's decision shall be final and binding and may be entered in any court having jurisdiction thereof. Each Party shall bear its own costs and attorneys' fees

and shall share equally in the fees and expenses of the arbitrator.

6. **Full Settlement.** The Parties acknowledge and agree that legitimate disputes regarding collocation facility decommissioning and the monetary obligations of each of the Parties have been raised and that the resolution reached in this Agreement represents a binding compromise of the Parties' positions. Therefore, the Parties agree that resolution of the issues contained in this Agreement shall be deemed full and complete and, except as provided in Section 5 above, cannot be used to the detriment of either Party.

7. **Governing Law.** This Agreement shall be interpreted and construed in accordance with the laws of the State of Colorado, and shall not be interpreted in favor or against any Party to this Agreement except as expressly provided herein.

8. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and cannot be rescinded, amended or modified except in a writing executed by authorized representatives of both Parties. The Parties have entered into this Agreement after conferring with legal counsel. Each of the Parties forever waives all right to assert that this Agreement was a result of a mistake in law or in fact.

9. **Binding Agreement.** The terms and conditions contained in this Agreement shall inure to the benefit of, and be binding upon, the Parties, their respective successors, affiliates and assigns.

10. **Severability.** If any provision of this Agreement should be declared to be unenforceable by any administrative agency, court of law, or other tribunal of competent jurisdiction the remainder of the Agreement shall remain in full force and effect, and shall be binding upon the Parties hereto as if the invalidated provision were not part of this Agreement.

11. **Waiver.** The waiver of any right on one or more occasions by either Party shall not constitute a waiver of any such right in any other instance.

12. **Counterparts.** This Agreement may be executed by facsimile signature (provided it is immediately followed by the original by mail) and in any number of counterparts, each of which would be deemed to be original and all of which taken together shall constitute one and the same agreement.

13. **Rules of Construction.** The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as amplifying or limiting any of its content. Words in this Agreement which import the singular connotation shall be interpreted as plural, and words which import the plural connotation shall be interpreted as singular, as the identity of the Parties or objects referred to may require. Unless expressly defined herein, words having well known technical or trade meanings shall be so construed. All listing of items shall not be taken to be exclusive, but shall include other items, whether similar or dissimilar to those listed, as the context reasonably requires.

IN WITNESS THEREOF, the Parties have caused this Facility Decommissioning Agreement to be executed as of this 29 day of January, 2002.

COVAD COMMUNICATIONS COMPANY

By: 

Name of Signatory

Title: VP & EC of Ext. Affairs

QWEST CORPORATION

By: 

Audrey McJenny

Title: Senior Vice President

By: 

Steve Hansen

Title: Vice President

DECOMMISSIONED SITES FOR COVAD
 November 9, 2001
 EXHIBIT A

GLEC Name	Decommissioning BAN	Related BANs	Submit Date	Validation Date	Units	11 Character CLLI of Cells	CO Name	Decommissioning MRGs Paid	MRG Bent	Monthly Recurring Charge (1)	Actual NFS Date where MRGs not billed (2)	MRGs Credited from MRC Decom Pynt Date to Sys Odr Date (3)	MRGs Credited from Decom Validation Date to Decom Pynt Date (4)

REDACTED